

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION**

**LAEL VESSEL
LA. DOC #355033
VS.**

**CIVIL ACTION NO. 3:14-cv-0664
SECTION P**

JUDGE ROBERT G. JAMES

CHAD LEE

MAGISTRATE JUDGE KAREN L. HAYES

REPORT AND RECOMMENDATION

Pro se plaintiff Lael Vessel, proceeding *in forma pauperis*, filed the instant civil rights complaint pursuant to 42 U.S.C. §1983 on March 26, 2014. Plaintiff is an inmate in the custody of the Louisiana Department of Corrections. He is incarcerated at the Dixon Correctional Institute, Jackson, Louisiana; however he complains that he was exposed to unsafe conditions and injured when he was confined at the Franklin Parish Detention Center (FPDC). He sued FPDC Warden Chad Lee and prayed for compensatory and punitive damages. This matter has been referred to the undersigned for review, report, and recommendation in accordance with the provisions of 28 U.S.C. §636 and the standing orders of the Court. For the following reasons it is recommended that the complaint be **DISMISSED WITH PREJUDICE** as frivolous.

Background

On June 18, 2013, plaintiff was incarcerated at the FPDC. While attempting to exit his top bunk he slipped and hurt his back. He was apparently transferred to the Tensas Parish Detention Center where he reported the incident and requested medical care. He claims that the Sheriff and Warden are doing nothing to address the hazardous conditions inherent in failing to provide safety ladders to assist inmates in and out of the top bunk beds, and are causing them

under threat of disciplinary actions to jump in and out of the top bunks.

Law and Analysis

1. Screening

Plaintiff is a prisoner who has been permitted to proceed *in forma pauperis*. As a prisoner seeking redress from an officer or employee of a governmental entity, his complaint is subject to preliminary screening pursuant to 28 U.S.C. § 1915A. *See Martin v. Scott*, 156 F.3d 578, 579-80 (5th Cir.1998) (*per curiam*). Because he is proceeding *in forma pauperis*, his complaint is also subject to screening under § 1915(e)(2). Both § 1915(e)(2) (B) and § 1915A(b) provide for *sua sponte* dismissal of the complaint, or any portion thereof, if the Court finds it is frivolous or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary relief against a defendant who is immune from such relief.

A complaint is frivolous when it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). A claim lacks an arguable basis in law when it is “based on an indisputably meritless legal theory.” *Id.* at 327. A complaint fails to state a claim upon which relief may be granted when it fails to plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *accord Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

2. Conditions of Confinement

Complaints about prison conditions are analyzed under the Eighth Amendment which proscribes cruel and unusual punishment. While the Eighth Amendment does not prohibit punishment it does prohibit cruel and unusual punishment including the unnecessary and wanton infliction of pain. *See Rhodes v. Chapman*, 452 U.S. 337, 347, 101 S.Ct. 2392, 69 L.Ed.2d 59

(1981). Additionally, while the Eighth Amendment does not mandate comfortable prisons, it does not permit inhumane ones. *Harper v. Showers*, 174 F.3d 716, 719 (5th Cir.1999).

Federal courts employ a two-part test to determine whether a prisoner has established an Eighth Amendment violation. *Harper*, 174 F.3d at 719. First, there is an objective requirement that the plaintiff demonstrate conditions “so serious as to deprive prisoners of the minimal measure of life’s necessities,” as when the prisoner is denied “some basic human need.” *Woods v. Edwards*, 51 F.3d 577, 581 (5th Cir.1995); *Farmer v. Brennan*, 511 U.S. 825, 834, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994). Second, under a subjective standard, it must be shown that the responsible prison officials acted with deliberate indifference to the prisoner’s conditions of confinement. *Woods*, 51 F.3d at 581. “The second requirement follows from the principle that only the unnecessary and wanton infliction of pain implicates the Eighth Amendment.” *Farmer*, 511 U.S. at 834, 114 S.Ct. 1970 (internal quotation marks and citations omitted) (emphasis added).

“For conditions of confinement to rise to the level of an Eighth Amendment violation, they must be “cruel and unusual” under contemporary standards. *Rhodes v. Chapman*, 452 U.S. 337, 347, 101 S.Ct. 2392, 69 L.Ed.2d 59 (1981). To the extent that such conditions are restrictive and even harsh, they are part of the penalty that criminal offenders pay for their offenses against society. *Id.* However, when the restrictions of confinement rise to a level that results in physical torture, it can result in pain without penological purpose constituting cruel and unusual punishment under the Eighth Amendment. *Id.*” *Bradley v. Puckett*, 157 F.3d 1022, 1025 (5th Cir. 1998). Plaintiff’s complaint simply does not rise to the level of Eighth Amendment violations.

Plaintiff and his fellow inmates may be clearly inconvenienced by the prison’s failure to

provide safety ladders to enter and exit the top bunks. However, this inconvenience does not amount to cruel and unusual punishment.

To rise to the level of a constitutional violation, the conditions must be “ ‘so serious as to deprive [plaintiff] of the minimal measure of life’s necessities... ’”*Alexander v. Tippah County*, 351 F.3d 626, 630 (5th Cir.2003) (quoting *Woods v. Edwards*, 51 F.3d 577, 581 (5th Cir.1995)). Thus, in order to prevail on such a claim, the plaintiff must demonstrate not only that he was exposed to a substantial risk of serious harm, but that he actually suffered some harm that was more than *de minimis*. See *Siglar v. Hightower*, 112 F.3d 191, 193-94 (5th Cir.1997); *Alexander v. Tippah County, Miss*, 351 F.3d at 630-31; *Luong v. Halt*, 979 F.Supp. 481, 486 (N.D.Tex.1997). Plaintiff has alleged no specific injury resulting from his fall. Further, even if plaintiff were able to demonstrate some physical harm beyond *de minimis* inconvenience, his claim would still be subject to dismissal because he has not shown that Warden Lee, his only defendant, was deliberately indifferent to his plight. He has not alleged that the defendant purposefully deprived him of safe access to his bunk; indeed, read liberally, it appears that plaintiff’s injury, if any, was at worst due to the defendant’s negligence, and such a claim is not compensable under Section 1983.

Conclusion and Recommendation

Therefore,

IT IS RECOMMENDED THAT plaintiff’s civil rights complaint be **DISMISSED WITH PREJUDICE** as frivolous in accordance with the provisions of 28 U.S.C. §§ 1915 and 1915A.

Under the provisions of 28 U.S.C. Section 636(b)(1)(C) and Rule 72(b), parties aggrieved

by this recommendation have fourteen (14) days from service of this report and recommendation to file specific, written objections with the Clerk of Court. A party may respond to another party's objections within fourteen (14) days after being served with a copy of any objections or response to the district judge at the time of filing.

Failure to file written objections to the proposed factual findings and/or the proposed legal conclusions reflected in this Report and Recommendation within fourteen (14) days following the date of its service, or within the time frame authorized by Fed.R.Civ.P. 6(b), shall bar an aggrieved party from attacking either the factual findings or the legal conclusions accepted by the District Court, except upon grounds of plain error. *See, Douglass v. United Services Automobile Association*, 79 F.3d 1415 (5th Cir. 1996).

In Chambers, Monroe, Louisiana, April 30, 2014.



KAREN L. HAYES
UNITED STATES MAGISTRATE JUDGE